



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF APRIL 28, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, King, Lorenz, Lydon, and Sharma

ABSENT: Weaver (excused)

STAFF PRESENT: Jeff Schwob, Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Norm Hughes, City Engineer  
Kelly Morariu, Senior Management Analyst  
Barbara Meerjans, Associate Planner  
Cliff Nguyen, Planner II  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Henry Garcia, Video Technician

APPROVAL OF MINUTES: Regular Meeting of April 14, 2005 was approved with the following corrections:

Page 1, Absent: ~~Lydon~~ Lorenz

Page 7: Commissioner Sharma speaking“ . . because the ownerships of the businesses ~~did~~ do change.

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 1, 3, 4, 5, 6, AND 8.

IT WAS MOVED (KING/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBERS 1, 3, 4, 5, 6, AND 8.

**Item 1.** **REEVES RESIDENCE – 41276 Vargas Road – (PLN2004-00292)** – to consider a conditional use permit application for the demolition of an existing residence and the construction of a new 4,343 square foot residence in the Mission San Jose Planning Area. This project is categorically exempt from CEQA, per Section 15303, New Construction or Conversion of Small Structures.

**Commissioner Sharma** asked what kind of visual safeguards would be appropriate for new construction, even though mature landscaping was on the lot.

**Planning Director Schwob** replied that a Measure T provision talked about the “appropriate landscaping” that should be included in a new project that might help to reduce the visibility of the project from public places. It was within the Commission’s purview to make the

determination as to what was appropriate landscaping and if the proposed vegetation actually helped to mitigate the public visibility.

**Chairperson Harrison** announced that letters from Bruce Johnson and Jane and Lloyd Samper had been received and should be part of the record.

**HOLD PUBLIC HEARING;**

**AND**

**FIND THAT THE PROJECT PLN2004-00292 AS PROPOSED IS CATEGORICALLY EXEMPT FROM CEQA UNDER SECTION 15302, REPLACEMENT OR RECONSTRUCTION, FOR THE REASONS INDICATED IN THIS REPORT;**

**AND**

**FIND THE PROJECT PLN2004-00292 AS RECOMMENDED BY STAFF IS CONSISTENT WITH STANDARDS, GOALS AND POLICIES OF THE HILL AREA DEVELOPMENT POLICIES, AND GENERAL PLAN FOR THE REASONS INDICATED IN THIS REPORT;**

**AND**

**FIND THE PROJECT PLN2004-00292 IS CONSISTENT WITH THE GOALS AND PERFORMANCE STANDARDS ADOPTED UNDER THE HILL INITIATIVE OF 2002, MEASURE T, FOR THE REASONS INDICATED IN THIS REPORT;**

**AND**

**APPROVE THE PROJECT PLN2004-00292 AS RECOMMENDED BY STAFF AND SHOWN ON EXHIBIT "A", BASED UPON THE FINDINGS AND CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "B" AND COLOR AND MATERIAL BOARD, EXHIBIT "C".**

- Item 3. MAHENDRU RESIDENCE – 45931 E. Hidden Valley Terrace – (PLN2005-00106)** – to consider a Planned District Minor Amendment to allow for the construction of a 6,846 square-foot single-family residence with a 1,135 square-foot garage. The new house will be located at Lot 10, Tract 6412, in the Warm Springs Planning Area. This project complies with the previously approved Mitigated Negative Declaration for the entire project.

**HOLD PUBLIC HEARING;**

**AND**

**DETERMINE THAT ANY ENVIRONMENTAL EFFECTS OF THE PROPOSED PROJECT WERE CONSIDERED AND STUDIED IN CONJUNCTION WITH THE PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION FOR THE PLANNED DISTRICT AND SUBDIVISION AND NO ADDITIONAL ENVIRONMENTAL REVIEW IS REQUIRED FOR THIS PROJECT;**

**AND**

**FIND THE PROPOSED PROJECT TO BE IN CONFORMANCE WITH THE APPROVED PLANNED DISTRICT FOR THE SITE AND IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN;**

**AND**

**APPROVE PLN2005-00106 AS SHOWN ON EXHIBIT "A", SUBJECT TO THE CONDITIONS SET FORTH IN EXHIBIT "B" AND THE COLOR/MATERIAL BOARD AS SHOWN ON EXHIBIT "C".**

**Chairperson Harrison** asked which item speaker Greg Vega wished to speak on. He wanted to speak on Item 2.

- Item 4. GREEN CHERRY COMMON – 38723 Cherry Lane – (PLN2005-00127)** – to consider a Vesting Tentative Tract Map, Preliminary Grading Plan and Private Street application for 13 single family attached units with one below market rate unit located in the Central Planning Area. This project is categorically exempt per CEQA, Section 15332, In-Fill Development Projects.

HOLD PUBLIC HEARING;

AND

FIND THAT THE PROJECT IS EXEMPT FROM CEQA PURSUANT TO SECTION 15332.  
IN-FILL DEVELOPMENT PROJECT;

AND

FIND PLN2005-00127 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS  
CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS  
INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL  
PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF  
REPORT;

AND

FIND PLN2005-00127 PER EXHIBIT "A" (VESTING TENTATIVE TRACT MAP 7451);  
EXHIBIT "B" (FINDINGS AND CONDITIONS OF APPROVAL, VESTING TENTATIVE  
TRACT MAP 7451); EXHIBIT "C" (PRELIMINARY GRADING PLAN); AND EXHIBIT "D"  
(FINDINGS AND CONDITIONS OF APPROVAL, PRELIMINARY GRADING PLAN)  
FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT  
MUNICIPAL CODE;

AND

APPROVE PLN2005-00127 IN CONFORMANCE WITH EXHIBIT "A" (VESTING  
TENTATIVE TRACT MAP 7451); EXHIBIT "C" (PRELIMINARY GRADING PLAN);  
SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B" AND "D".

- Item 5. **KYLE TOM RESIDENCE – 3510 Dunbar Court – (PLN2005-00185)** – to consider a Major Amendment to Planned District (P-76-1) to allow building additions for residences on lots over 6,000 square feet in size in the Centerville Planning Area. This project is categorically exempt from CEQA, per Section 15301, Existing Facilities.

**DUE TO THE NEED TO AMMEND THE CC&RS, THE APPLICANT HAD REQUESTED A CONTINUANCE TO A DATE UNCERTAIN.**

- Item 6. **CENTERVILLE MARKET PLACE – 37070-37222 Fremont Boulevard – (PLN2005-00205)** – to consider the approval of a vesting tentative tract map and the creation of a private street to subdivide the Centerville Market Place site to allow the development of the site into 110 residential condominiums and seven retail condominiums, one of which is freestanding. The project is located in the Centerville Planning Area. This project complies with the previously approved Mitigated Negative Declaration for the entire project.

#### **MODIFICATION TO STAFF REPORT**

**Revised Exhibit "A":** The Vesting Tentative Tract Map 7599 displayed at the Planning Commission hearing has minor revisions from the exhibit received as an enclosure. The City of Fremont Redevelopment Agency has completed purchase of all properties included in the map and the owner list has been changed. Additionally some notes have been removed. The plan has also been revised to reflect some Fire Department comments. The conditions of approval have not been modified.

**Chairperson Harrison** disclosed that he was part owner of a business that had a lease hold interest close to this project. However, his participation in this decision did not create a conflict of interest.

**Commissioner Lorenz** made the same disclosure.

**Commissioner Chan** asked what the Fire Department recommendations were.

**Associate Planner Meerjans** replied that the Fire Department wanted the future locations to be shown for fire service line connectors on both streets.

**HOLD PUBLIC HEARING;**

**AND**

**FIND THE PREVIOUSLY APPROVED MITIGATED NEGATIVE DECLARATION ADDRESSES THE PROPOSED PROJECT AND NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;**

**AND**

**FIND PLN2005-00205 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND PLN2005-00205 PER EXHIBIT "A" (TENTATIVE TRACT MAP 7599 AND PRIVATE STREET) AND EXHIBIT "B" (FINDINGS AND CONDITIONS) FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;**

**AND**

**APPROVE PLN2005-00205 IN CONFORMANCE WITH EXHIBIT "A" (TENTATIVE TRACT MAP 7599 AND PRIVATE STREET) AND EXHIBIT "B" (FINDINGS AND CONDITIONS).**

**Chairperson Harrison** asked Irene Koehler and Gabby Machuca if they wished to speak concerning Item 7. It was removed from the consent list.

**Commissioner Chan** requested that Item 7 be the first item heard under Public Hearing.

It was agreed to hear Item 7 first.

**Item 8.** **PASTA ? – 3720 Mowry Ave – (PLN2005-00120)** – to consider modifications to the awning material of a previously approved Finding for Site Plan and Architectural approval for a remodel of an existing 5,400 sq. ft. restaurant building located in the Central Business District. This project is categorically exempt from review under CEQA, pursuant to Section 15303 (New Construction or Conversion of Small Structures).

**Commissioner Lorenz** asked for clarification of the process, in terms of time and submittals, when an applicant wished to change something like this awning.

**Planning Director Schwob** replied that it was appropriate for it to come back to the Commission and it was processed as quickly as the applicant had provided the materials, staff met with the applicant and put it on the next available Commission agenda. The other parts of the project were allowed to proceed.

**HOLD PUBLIC HEARING;**

**AND**

**FIND PLN2005-00120, AS PER EXHIBIT "A" (AWNING SAMPLE BOARD AND COLOR RENDERING) IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE CENTRAL BUSINESS DISTRICT;**

**AND**

**FIND PLN2005-00120 IS CATEGORICALLY EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTION 15301 RELATED TO ALTERATIONS TO EXISTING FACILITIES;**

**AND**  
**APPROVE PLN2005-00120, AS SHOWN ON EXHIBIT “A” AND SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT “B”.**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

**PUBLIC COMMUNICATIONS**

**ORAL COMMUNICATIONS**

**PUBLIC HEARING ITEMS**

- Item 7.      FINDING FOR GENERAL PLAN CONFORMITY – Citywide – (PLN2005-00252)** – to consider a finding for General Plan conformity for the Five-Year Capital Improvement Program and Integrated Capital Assets Plan (CIP/ICAP) for fiscal years 2005/06 – 2009/10. This project is exempt from CEQA review, per section 15061 (b) (3), because the project has no potential for causing a significant effect on the environment.

**Planning Director Schwob** introduced **Kelly Morariu**, Project Manager.

**Chairperson Harrison** opened the public hearing.

**Irene Koehler** stated that she was the Chairperson for “Celebrate Fremont,” a community-driven organization involved in planning the celebration of the City’s 50<sup>th</sup> anniversary. “Celebrate Fremont at the Park” would occur on September 9 and September 10, 2006 and would be a family-oriented weekend. Resounding support had been seen for using Park funding to construct a performance venue in Central Park during, or prior to, 2006 as a permanent legacy.

**Gaby Machuca** stated that she was the Co-Chair for the Business and Neighborhood Team for “Celebrate Fremont”. She recommended accessing the Park Facilities Impact fees to replace the existing gazebo structure at Central Park, and she added that it would not entail an increase in maintenance fees. She read a comment from Margaret Thornberry, Chair for the Heritage Team, “At present, the existing structure would require significant repair, which I do not recommend, as the acoustic properties of the design are not appropriate for this site, which perhaps explains why this structure is so little used. Gazebo structures, such as the current design, need to be raised above the audience, rather than at the foot of a slope. A slope site, such as this, requires a Greek-theater design with an open stage facing the slope and a rear wall to project sound to the audience...This type of structure would be a good venue for open air concerts and Shakespeare in the Park during the summer months, at an initial cost of probably not much more than the cost of upgrading and repairing the existing gazebo structure.”

**Chairperson Harrison** closed the public hearing.

**Planning Director Schwob** stated that the Commission’s purview was to review the proposal, to make a determination and to forward a recommendation to the City Council, if the proposals were consistent with the city’s General Plan.

**Project Manager Morariu** stated that staff had become aware of this proposal about a day ago and it would be included within the staff report to be presented to City Council on May 24<sup>th</sup>. She recommended that the speakers' comments also be included within the staff report.

**Chairperson Harrison** felt that her suggestion was a good idea.

**Commissioner Lorenz** asked staff to explain the difference between CIP Funds and Park Acquisition Fees. Were there any geographic constraints on where that money must be spent?

**Project Manager Morariu** replied that the Park Acquisition Fees were part of the funding in the CIP. Park Acquisition and Park Facility fees were specific development impact fees that all new residential development paid within the city. Park Facility fees were to be used for the improvement of parklands. She was not aware of any constraints on where the monies could be spent within the city.

**Commissioner King** asked why the Commission was engaged in this conversation.

**Senior Deputy City Attorney Seto** replied that State law required that a Planning Commission had to make a recommendation about this type of Capital Improvement Project spending to the City Council, based on the projects being proposed and if those projects were consistent with the General Plan.

**Commissioner Sharma** stated that the proposal made sense and he would strongly support it.

**Commissioner Chan** announced that she was the Vice-Chair for "Celebrate Fremont" and stated that the proposed legacy item, such a performing arts structure, would help to keep the city's arts and culture events within the city. She encouraged the other Commissioners to support it.

**Commissioner Lydon** asked if any action should be avoided by the Commission that could have unrecognized consequences for this recommendation.

**Project Manager Morariu** knew of no negative consequences.

IT WAS MOVED (KING/CHAN) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION

**FIND CIP/ICAP GENERAL PLAN CONFORMITY FINDING, PLN2005-00252, IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, HOUSING, PARKS & RECREATION, HEALTH & SAFETY, OPEN SPACE, PUBLIC FACILITIES, TRANSPORTATION AND NATURAL RESOURCE CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT; AND RECOMMEND THE CIP/ICAP FOR CONSIDERATION AND APPROVAL TO THE CITY COUNCIL**

**AND**

**ADD THE SPEAKERS' AND COMMISSION'S COMMENTS TO THE STAFF REPORT.**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, King, Lorenz, Lydon, Sharma
NOES:	0
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

**Item 2. SANDHU RESIDENCE – East King – (PLN2005-00058)** - to consider a Conditional Use Permit and Preliminary Grading Plan for the development and use of a 16,214 square foot single-family residence located in the Hill Area of the Niles Planning Area. A Mitigated Negative Declaration has been prepared for this project.

**Planning Director Schwob** displayed aerial photos and maps that showed the 81-acre parcel. Background comments included Measure T being adopted by voters in November 2002 and that the Planning Commission had approved a conditional use permit (CUP) for the development of a single-family home on this parcel in May 2003. That decision had been appealed to City Council in July 2004 and the decision had been reversed. Staff and applicant had been directed to work together on a constraints analysis and to identify other locations that could be considered. The applicant then reapplied for a CUP and a Preliminary Grading Plan for a similar proposal in August 2004. Alternative locations were identified, as shown on the alternative building sites diagram. The applicant preferred Location 1. Under Measure T, three provisions were applicable: the steep slope strict prohibition, the hilltop strict prohibition and the visual safeguard directive provision.

**City Engineer Hughes** spoke to the steep slope provision. He read a portion of the provision that stated, "No building may be located on a site that has access over a slope of 30 percent or more." An aerial photo with contour lines showed a section drawn through the existing gravel road that accessed Site 1. The average slope of the natural ground at the location of the road was 37 percent, which was in conflict with Measure T.

**Planning Director Schwob** continued with addressing the hilltop provision of Measure T and quoted, "Structures may not be located on ridgelines or hilltops as viewed from public roads, trails or other public places, unless there is not another building site on the parcel or on a contiguous parcel in common ownership when this ordinance becomes effective or thereafter." An aerial photo showed the hilltop topography and the sections through it with the general location of Location 1. Location 1A was in the saddle area, nearby. Location 1A would be less visible from public places than Location 1. Location 1A and Location 4 (in the riparian corridor) were recommended for a home no greater in size than 10,000 square feet.

**Commissioner King** asked when the Commission approved this project before, if the proposed location for this home was different. Was it staff's recommendation that the Commission had approved? He wondered why staff was making a different recommendation when the house was proposed to be in the same spot. Was it staff's position that the applicant had complied with the request of the City Council?

**Planning Director Schwob** stated the location was generally the same. The house had been reoriented slightly back on the hilltop and had been lowered a little. The Commission had previously approved staff's recommendation. At the present time, staff was learning more about how Measure T should be implemented and had become more knowledgeable about the process. Again, City Council had directed staff and the applicant to develop studies that showed a number of sites and their constraints. He confirmed, for the record, that staff had received three letters from the applicant, all dated April 25<sup>th</sup>, with attachments, which were part of the Commissioners' packets. Emails from Tom Malpede, Paul Knight, Dr. Sandhu (applicant) and Marsha West were also received.

**Commissioner Chan** asked if definitions for hilltops, ridgelines and toe of the hill were being peer reviewed, which would eventually be incorporated into the municipal code.

**Planning Director Schwob** replied that the toe of the hill line was in the process of being peer reviewed. The definitions were not to be part of the peer review aspect. One definition of ridgeline was in the code from Measure A, but other definitions had been proposed for ridgelines beyond the main ridgeline or perpendicular to the existing ridgeline. Ridgeline definitions were not relevant to this issue. A new definition for hilltops was also being

proposed, because Measure T spoke to both ridgelines and hilltops. That definition had been recommended by the Planning Commission to the City Council, and a final, formal decision had not been made by City Council at this time.

**Commissioner Chan** suggested that the applicant might want to continue this hearing until "hilltops" had been defined.

**Planning Director Schwob** guessed that the applicant preferred to proceed. However, if the Commission decided that its hilltop recommendation was no longer appropriate, it might want to make an additional recommendation to City Council that the definition should be changed.

**Commissioner Lydon** asked if the changes for the location of the home had been reflected in the handout and the slide shown presentation.

**Planning Director Schwob** replied that the current proposed location had been shown, but not the original location, previously considered by the Commission.

**Commissioner Sharma** recalled that all aspects of the project had been discussed when the Commission originally reviewed this project and many of the proposed definitions had not been approved or legally tested. He asked what was so different that staff was recommended something else.

**Planning Director Schwob** believed that, based upon current understanding of Measure T, the proposed project was a violation of the steep slopes provision and the hilltops provision. During a public hearing on a different home, staff's definition of a hilltop had been clearly refuted, which caused staff to realize that they had not been looking at hilltops as necessarily envisioned by Measure T.

**Chairperson Harrison** opened the public hearing. He thanked Dr. Sandhu for allowing Item 7 to be heard first.

**Dr. Sukhwinder Sandhu**, applicant, summarized that his project had been approved by the Planning Commission last year and, subsequently, as requested by City Council, he had spent approximately 200,000 dollars for follow-up studies. Since the Commission's approval, neither the performance standard nor the municipal code nor Measure T had changed. What had changed were the various Measure T definitions. The access road to his property had been in existence for more than 60 years and City Council had removed it from the appeal, because it was not a violation of Measure T. Staff had decided to grandfather in only the public and private roads existing before Measure T, because they were generally much wider, had gutters, and were able to accommodate fire vehicles and two-way traffic. He displayed a photo of Morrison Canyon, which showed a road on a greater than 30 percent grade with one vehicle on it, and a photo of his road, which showed two vehicles, side-by-side to demonstrate that his access road was better than some city other approved roads.

The second reason for staff's recommendation was because his home would be on a hilltop. Measure T never defined a hilltop, but it was defined by Webster's Dictionary as "the top of the hill." He displayed a map that showed Location 1 where the he wished to build his home. After moving the home back, the line of vision would not be broken when seen from Coyote Hill. Of course, a spot (the home) could be seen from other areas but would be virtually invisible. By any definition, Location 1 was not a hilltop. The appellant's representative believed that more visual studies should be done, although he had publicly stated that the home did not have to be invisible. Photos were displayed to document the visual study that had been performed from every recommended public site to every recommended building site and these studies had been peer reviewed by a consultant chosen by the city. Location 1 was the preferred site with minimal visibility.



He was also asked to hire a geologist to review geological constraints, a civil engineer to review slope constraints, a biologist to review biological constraints on all of the sites. Staff had then narrowed down the choices to three. In his opinion, Location 4 was not acceptable, because, according to the experts (above), it was on the Hayward Fault, below an active landslide zone and was below the dam. Location 1A could be seen from Mission Boulevard and could not accommodate the preferred design of his home in size and height within the limits of Measure T.

The house would be moved 90 feet back from knoll, 30 feet back from the originally proposed location. The house would be rotated and the floor and rooftop would be lowered to further minimize the visibility. He proposed landscaping berms to screen the home, as was demonstrated to the visiting Commissioners.

**Susan Gearhart** stated that it was illegal to approve anything to do with steep slopes under Measure T. The riparian corridor (Site 4) was less prohibitive than a steep slope. Many homes and townhouses were already located in this area, which was not much of a riparian corridor, anymore. The access road to either Location 1 or 1A, when paved, would "become its own body of visual irritation." A 16,213 square foot home would not be close to invisible. She agreed with staff that Location 4 was the best place for the applicant to build his home.

**Commissioner Lydon** asked the speaker if the applicant's interpretation was correct that new roads crossing a steep slope could not be approved but existing roads were grandfathered. He asked if she believed that only public approved or private roads were the only acceptable roads within a 30 percent slope.

**Ms. Gearhart** replied that the applicant's road was neither a private nor a public approved road. Anything over 30 percent was prohibited, "it's against the law, it's illegal." She used Morrison Canyon Road, as an example as a public road. The hills were full of dirt roads that had been created as firebreaks and were not meant to be used as roads, either public or private.

All the Commissioners disclosed that they had toured the property in question with the applicant.

**Dr. James Gearhart** stated that he lived on Morrison Canyon Road and it had been in existence since 1989 (corrected to 1889). Firebreaks were not approved roads, no matter how wide they were, and they were meant to protect homes in fire sensitive areas. Vehicles using the firebreaks had turned them into illegal roads. He also had visited the site and the riparian corridor site right after the rains and he had seen very little water. He believed that allowing the fire road to the applicant's property would set a precedent. Location 4 was the only possible legal site. He asked why he had seen no story poles at Location 4 or photos, as directed by the city.

**Commissioner Sharma** asked if Measure T had not passed, would the speaker still consider the fire access road to the applicant's property illegal.

**Mr. Gearhart** replied that the access road was in reality a firebreak and "no one was pushing and shoving" before Measure T.

**Paul Knight** read the previously mentioned email to the Planning Commission, which stated that he had supported Measure T and that he agreed with staff's recommendation of Location 4 and their rejection of Location 1, the applicant's preference. The fundamental goal of Measure T would be best served by maintaining the prohibition to crossing the 30-degree slope.

**Jeff Iwasaki**, firefighter with the San Francisco Fire Department and a long-time friend of the applicant, stated that he drove firefighting equipment up and down the hills of San Francisco and through the narrowest alleyways of Chinatown. He assured the Commission that the road, itself, was not at 30 degrees and was more than wide enough to accommodate the average fire apparatus, which was approximately 8 feet wide.

**Chairperson Harrison** asked if there was a difference between a firebreak and a fire road.

**Mr. Iwasaki** replied that a firebreak was more like a trench, like during the war, which would stop a fire. A road was flat and three times wider than a firebreak. He had never seen a firebreak that was 20 feet wide.

**Curtis Priem**, 21-year resident and supporter of Measure T, feared the dismantling of Measure T through litigation. He recommended that this project be allowed, as long as it was not visible to the public. He believed that the city should worry more about the City of Hayward building massive water tanks and a warehouse on the ridge. If the house were hidden, then, by definition, it would not be on a hilltop or ridge top.

**Commissioner King** asked the speaker if his position was that the applicant should be allowed to proceed to construct his home on his preferred site, especially if it were hidden by trees.

**Mr. Priem** agreed, as long as the house was not visible. He would not recommend using trees as a screen as they would draw the eye to that particular area. If the house was not visible, then landscaping was not needed for screening. In his opinion, the main intent of Measure T was to not allow homes of any size on the ridgelines or hilltops.

**Maria Lucy Pinheiro**, Niles business owner, stated that she had known the applicant for over ten years. She wondered why he was having trouble building his house on a part of his 80 acres when it was acceptable for an investor to buy her building for affordable housing, which could close down her business.

**Chairperson Harrison** called for a recess at 8:29 p.m.

**Chairperson Harrison** called the meeting back to order at 8:41 p.m.

**Ketan Shah** was also a strong proponent of Measure T. However, he was confused about the issue at hand. He believed that Measure T was not being protected, and he, also feared litigation. He suggested that this project not be used to define the Measure T terminology, instead this project should be allowed to move forward. He strongly supported the project and did not believe Measure T should impact it.

**Sudhir Singh** stated that when driving on Mission Boulevard, the applicant's home would not be the main reason for looking at the hills, as traffic would probably take up most of a driver's attention. He saw no problem with the proposed project, especially since the applicant had done what had been asked of him by the city at his cost.

**Betsy Yamasaki** stated that she had listened to both Measure T meetings and to meetings that had to do with the applicant's proposed home. The homes that were at the base of the hills were visible, but were not ugly. Since the applicant had done everything that had been required by the city and since he had purchased his property before Measure T was passed, he had the right to build a home that he was proud of and that he loved. It seemed that he was expected to build a home that would please everyone else in the City of Fremont, which was unreasonable. She encouraged the Commission to take into consideration all that the applicant has done to mitigate the problems with Measure T and to let him build the home of his dreams.

**Greg Vega** stated that he had known the applicant for 30 years. The applicant had accommodated the city with everything that he was asked to do by setting the home back and lowering it to be as invisible as possible. He wondered why the speakers who opposed this project should be given consideration when they lived in a home at an elevation of 690 feet, which was twice the height of the applicant's proposed residence. It was very visible and was located 50 yards from the street. He encouraged approval of the project.

**Chairperson Harrison** noted that the Gearharts' home was not relevant to these proceedings.

**Gary Basrai** stated that he had known the applicant for 20 years and practiced next to him. He had voted for Measure T and it was to stop the kind of development that was already in the hills. He agreed that what had been done before was irrelevant. He didn't want to see another home on the hill that had a red light on it, which could be seen from the Mark Hopkins Hotel in San Francisco, as was pointed out to him by the owner. He had not had a project like the applicant's in mind when he voted for Measure T. This project was not on the top of the hill. He stated that he hiked the Mission Peak area and the fire roads were actual roads not firebreaks. The applicant should be allowed to use the fire road on his property to access that portion of his property that he wanted to build on. This was not a subdivision, as had been built in other areas of the city, but a single home.

**Dr. R.V. Rao** stated that he supported the applicant's project. The applicant had provided many services to the community, including taking care of indigenous patients at all hours. He also felt that the objections from someone who lived on a single-lane road and at a higher elevation than the applicant's proposed home should be taken "with a pinch of salt." He encouraged the Commission to approve the project.

**Barbara Ferreira Mendes** was representing her family who owned the Ferreira Ranch, which was the property next door. She had lived on the ranch for 41 years and she traveled on a private road that had existed since the late 1800s. She welcomed the applicant and supported his endeavor.

**Chairperson Harrison** asked if her road was the same road that led to the proposed site and if she had any historical knowledge about the road up to the applicant's property.

**Ms. Ferreira Mendes** replied that they would travel on the same road for about a block. Then the road branched to the left (to the applicant's property) and to the right (her family's property). She knew the road had been there for a very long time, and she believed that the water company had built it.

**Commissioner Lorenz** stated that he had visited the property and had noticed a pipe with water flowing out of it on the left hand side just before her gate. He asked how often the water flowed from that pipe.

**Ms. Ferreira Mendes** stated that a few days ago there was little rain and there had been very little water. However, at times, she had seen water fill the pipe. It would probably stop running about the month of June, as it carried the runoff from the hills.

**Paul Kozachenko**, representing the applicant, closed by stating that Site 1 was the best location for the applicant's home and staff was correct when they had originally recommended it. Substantial evidence was in the record to support approval of the CUP and that the project complied with the General Plan. He quoted from the recommendation in the staff report, "Find that the proposed project at Location 1 violates the relevant provisions contained in the city's General Plan." If this project were approved, the only change would have to be the substitution of "does not violate" for "violates." In the next paragraph, change

the word “deny” to “approve.” The fourth paragraph would not be needed. In his opinion, Measure T was clearly about blocking the Summerhill Development from being approved in Vargas Plateau and making sure that these protections applied to the Vargas Plateau. Concerning the road, he read from the City Council transcript, which stated that the appellant’s representative had said that the main concern of Measure T was that no one would be allowed to build new roads over 30 percent slopes. He continued by reading, “I’m not going to argue that if it ever was 30 percent, it never can be used as access. The main point we want to make is the visual impact point.” An exception for existing roads had to be excepted with regard to Measure T, such as access to the houses at the end of Morrison Canyon Road and Niles Canyon. Nothing in Measure T stated that access roads only applied to private or public roads. He asked if it made sense to locate the house at Site 4, which would be very visible, rather than using an existing access road to Site 1. The applicant’s peer-reviewed, visual analysis showed that the house would be barely visible or largely invisible. Forcing the use of Site 4 rather than Site 1 was not in the spirit and intent of Measure T. No matter how many times the access road was called a firebreak, it was, in actuality, a fire road. There would be problems locating the house at Site 4, which was in a riparian corridor, as other agencies would have to be dealt with. The applicant had done a good job arguing the definition of hilltops. They are defined as the summit of a hill and the definition made sense. Adopting a resolution that would lead to the definition of the site of the old City Hall as having been located on a hilltop was absurd. Good planning pointed to building a 16,000 square foot house that was barely visible, rather than building a 10,000 maximum square foot house in a location that would be very visible.

**Chairperson Harrison** asked for a summary of the “hierarchy” of the violations concerning Measure T.

**Mr. Kozachenko** replied his interpretation was that the riparian corridors and the steep slopes were both prohibitions and the development in the visual plane of the hilltop was a directive.

**Commissioner Chan** asked if the applicant, Dr. Sukwinder Sandhu, was the same person as Dr. S. Goney Sandhu.

Off mike, “Yes.”

**Commissioner Chan** asked when Dr. Sandhu had purchased the land.

**Dr. Sandhu** replied that he purchased the property sometime between 2001 and 2002 before Measure T was passed.

**Chairperson Harrison** reminded the public that the public hearing was still open and now was the time to ask questions.

**Commissioner Chan** stated, in view of the 80-acre sized lot, discussion had ensued concerning that, legally, his land could be subdivided into four 20-acre parcels. She asked what the applicant planned for the disposition of his land in the future. If the Planning Commission denied his request to build on Site 1, what would be his preference between the other two sites, Site 1A and Site 4?

**Dr. Sandhu** replied that he did not intend to subdivide the land. However, in the future, after his death, his son may choose to do something different. His intention was to build one single house on the 80 acres. He would choose Site 1A over Site 4.

**Chairperson Harrison** closed the public hearing.

**Commissioner King** stated that he had sought the applicant's services professionally, and he knew the applicant to be one of the finest citizens of the community. He was concerned that this decision be legal. However, he expected that Measure T would eventually be challenged in the courts. He was personally convinced that, by allowing the applicant to construct his home on Site 1, no law would be violated. A court might, eventually, disagree with that conclusion. This applicant had gone beyond what any citizen should have to go through at tremendous cost and time. In terms of equity, the applicant should be allowed to build his house on Site 1, as was sometimes decided by courts of law. It would be best for the hills and best visually. He agreed with one of the speakers that when driving down the street, individual homes were not noticed.

**Chairperson Harrison** asked if Site 4 was the lower site that Dr. Gearhart had mentioned that had no story poles. He stated that he had visited Quarry Lakes to ascertain if he could see Location 1. He was able to see the lower location and he had located the upper site by looking for the five trees. With binoculars, he was able to see the site from some locations and was not able to see it from others. With screening, he believed the house would be very unobtrusive and suggested that more screening should be conditioned. He had also walked on part of the access road and he was able to pull out a large chunk of the road with his hand.

**Planning Director Schwob** replied that Site 5 originally had the lower story poles.

**Commissioner Lorenz** stated that he agreed with Mr. Knight that the fundamental intention of the Measure T voters was to limit development on the hillsides. According to Ms. Mendose, the access road was an existing ranching road that had been in existence for decades, if not centuries. He also had visited the access road and he believed that the visual impact of the road would not change with the construction of the applicant's home on Location 1. He wondered if the average voter had actually considered whether an existing public, private, fire or farming road should be allowed. He did not believe that was the spirit of the measure. The applicant had made a good argument concerning the fact that Council had not made a decision about the definitions of Measure T. The comments by the appellant's representative were that he would not expect that the house be invisible (and he asked staff to verify the accuracy of those comments). He displayed photos taken from his business location on Fremont Boulevard near the intersection of Thornton Avenue that showed the hill. He had shared these photos with many of his customers and his employees, many of which supported Measure T. No one was able to see any building in the first photo. The other three photos were taken with a telephoto lens, which showed a home. He stated that he had never noticed that home before, although he was a life-long resident of Fremont. This home was in the spirit of Measure T, as would be the applicant's proposed home. He agreed with another speaker that the existing homes that were built on ridge tops were offensive and he would never like to see those kinds of homes ever built again in the hills. He agreed that screening materials should be increased and he recommended that they be planted as soon as possible to also screen the construction. He suggested that the City Landscape Architect could guide the applicant so that the locations of the landscape material looked as natural as possible. Staff should also work with the applicant to make certain that lighting did not provide any visual impacts, also. He agreed with other speakers that the applicant could not please everyone. The applicant had expended much time and resources to accommodate as many requests as he could and Commissioner Lorenz applauded him for that. He would support the applicant's desire to build his home in Location 1.

**Chairperson Harrison** remembered, for the record, receiving a speaker's card from Gene Yamasaki that stated he did not wish to speak but was in attendance to support the applicant.

**Commissioner Sharma** read from Measure T, "The purpose of this ordinance is to protect the hills of Fremont from harmful and unnecessary development." He did not feel that the applicant's proposed home would fall in this category. "The ordinance maintains the existing

use of the hills for agriculture, outdoor recreation, very low residential and open space.” The applicant’s home would fit into this category. “Its goal is to protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility and scenic hill view while permitting access to nature and outdoor recreation for residents of Fremont.” Nothing would be changed by the building of the applicant’s house. “It is designed to prevent urban-type sprawl to steep and frequently unstable terrain, thereby, avoiding high costs to taxpayers for public facilities and services, as well as those lost to the environment.” The applicant’s home would not affect any part of this statement. “The ordinance will limit traffic congestion and air and water pollution by providing the needed balance between urban development and rural.” He could not see where the applicant’s project would violate any of the above, as stated in Measure T. He asked for an opinion from the City Attorney.

**Senior Deputy City Attorney Seto** stated that each person had his own reasonable interpretation regarding Measure T. She was not able to tell anyone on the Commission if they were right or wrong in their interpretation or whether this project violated Measure T.

**Commissioner Sharma** stated that the Commission had originally approved this project after considering all aspects of Measure T. Now that the Commission was being asked to review the project and make a decision, again, he believed the project was better and that the applicant had done everything asked of him. According to what was understood of Measure T, at this time, he would support the project to be built at the applicant’s preferred location.

**Commissioner Chan** stated that this decision was not easy to make. Much of the information presented supported the applicant and much begged the question about Measure T and its intent. She feared the development of hill areas where existing access roads crossed the 30 percent slope, if this project were approved. It felt like this project could be precedent setting. Both Location 1 and 1A would require a paved road to the site. The hiking trails to Mission Peak could be seen, so a 2400-foot paved road would be a visible scaring. If the applicant were directed to build on the alternate sites, the project would be in violation of Measure T, in some way or another. This applicant had “bent over backwards to try and comply with various requests and suggestions from staff and at his own expense.” According to staff’s recommendation, if the applicant were allowed to build on Site 1, Measure T would be violated on two counts, as would Site 1A; Site 4 was in the riparian corridor, but would not require a long, paved road. She was struggling with whether violations of Measure T was more egregious at Site 4 than at Site 1A. She worried about where a decision that turned out to be in violation of Measure T would lead. She appreciated all of the information that had been brought forward by the applicant and by the speakers. She hoped that the Commission made the right decision.

**Commissioner Lydon** wondered why the Reeves’ project, which was approved earlier on consent, was described in the staff report as “not likely to be noticeable from the nearest public vantage point,” and this applicant’s project was not described similarly, since seeing this project from most public vantage points “would be a stretch.” He noted that Commissioner Lorenz took his photos of the hills from his business. Soon a project would be built across the street and he would never have that view again. It seemed that “we have two different descriptors, if you will, as to what could be seen at one place and not another” and he asked why that was so.

**Planning Director Schwob** replied that Vargas Road was in a valley and was visible from just one or two public locations. Whereas, the applicant’s preferred location was visible from a number of public vantage points in “the flatlands.” The vantage points to Vargas Road were limited compared to something that could be seen from a large number of public streets.

**Commissioner Lydon** stated that it seemed that the two projects were similar from a visual standpoint. He had also visited Quarry Lakes and he had not been able to see the site, although he “was not the poster child for vision” and he would not want to make a decision

according to what he could see two miles away. In his opinion, some liberties were taken with some of the descriptions of fire roads, access roads, hill roads and firebreaks. Ms. Mendose put it perfectly by stating that this access road could have been a cow trail 100 years ago. Yet, it had evolved into a convenient way to access her family's property, as had other roads in other locations throughout the city. Motorized fire apparatus did not come into the city until well into the 1920s and these roads had already existed at that time. He believed this question would come up again in the future and it would be best handled in a non-emotional setting. Yes, they would serve as a firebreak, but were they put there, originally, as a firebreak? As a former member of the Fire Department, he stated that any access was used by the firefighters, if needed. Eventually, those access roads had been numbered, which had changed the meaning of those roads. They were not intended to be the "critical crux of a situation like we are facing this evening." The applicant had received many accolades this evening from supportive speakers, Commissioners and members of the public about his contribution to the community and his position in the community. He wanted to make it clear that this applicant had been treated only as "Goney Sandhu, property owner and applicant."

**Chairperson Harrison** stated that he had voted for Measure T and would vote for it again, even though there were problems with some of the ambiguities. However, "It cures more than it hurts" and those ambiguities "were not on the books, right now." The applicant had fulfilled all of the requests made by City Council and it was a bit unfair to change the rules. He agreed with a comment often made by Commissioner Weaver, who was absent, that the exceptions made the greatest headaches. He was not sure approving this project would be an exception. He disagreed with the formula that staff used to arrive at their recommendation. In his opinion, the most important purpose of Measure T was the view, the second purpose was environmental and the third was the access. When considering Site 4, the view and environmental were not acceptable, which left Sites 1 and 1A to consider. He had approved this project originally; it had not changed very much since then; and he would approve it again. If the applicant's patience decided the size of his home, this house would be ten times the size proposed.

**Chairperson Harrison** asked **Senior Deputy City Attorney Seto** if she needed any special findings for the Planning Commission to approve the project.

**Senior Deputy City Attorney Seto** replied that staff could formulate findings based upon the foregoing discussion. She did note that because staff's recommendation was to direct the applicant to consider different locations, there were no findings or conditions included for approval at this time. The Commission could direct staff to return with specific conditions and findings or the Commission could approve the project and direct staff to work with the applicant concerning the conditions. If there was a dispute, the conditions could be brought back to the Commission for review.

**Planning Director Schwob** recalled that the previous approval had conditions that went with the approval. Additional conditions had been suggested that had to do with additional landscaping and assuring that lighting did not create a visual impact. He recommended that the findings and conditions associated with this project be brought back to the Commission for approval at the next regular meeting.

**Commissioner Sharma** agreed that lighting and vegetation was important to minimize the visual impact of this project.

**Commissioner Lorenz** suggested larger vegetation than was had been proposed be conditioned.

**Senior Deputy City Attorney Seto** also recommended that the Commission adopt the mitigated negative declaration and find that it reflected the independent judgment of the city.

IT WAS MOVED (KING/SHARMA) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1-0)  
THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**FOUND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES. THEREFORE, FOUND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES AND RECOMMENDED THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**ADOPTED THE DRAFT MITIGATED NEGATIVE DECLARATION FOR THE PROJECT FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT, AS MITIGATED AND CONDITIONED, WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FOUND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**APPROVED A MITIGATION MONITORING PLAN FOR THE PROJECT;**

**AND**

**CONDITIONAL APPROVAL OF PLN2005-00058 (CONDITIONAL USE PERMIT AND PRELIMINARY GRADING PLAN), AS SHOWN ON EXHIBIT "A", SUBJECT TO SUBSEQUENT ADOPTION OF FINDINGS AND CONDITIONS;**

**AND**

**DIRECT STAFF TO FORMULATE FINDINGS AND CONDITIONS OF APPROVAL FOR REVIEW BY THE PLANNING COMMISSION ON MAY 26, 2005 INCLUDING CONDITION TO MITIGATE NIGHTTIME LIGHT AND REDUCE THE STRUCTURE'S VISUAL IMPACT BY THE INCORPORATING APPROPRIATE LANDSCAPING CONSISTING OF LARGE PLANT MATERIAL (E.G. MINIMUM 24-INCH BOX TREES).**

The motion carried by the following vote:

AYES:	5 – Harrison, King, Lorenz, Lydon, Sharma
NOES:	1 – Chan
ABSTAIN:	0
ABSENT:	1 – Weaver
RECUSE:	0

## **MISCELLANEOUS ITEMS**

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Report on actions of City Council Regular Meeting of April 26, 2005.
  - Greenbriar – City Council reviewed the grading options of split pads versus flat pads on April 26, 2005. The City Council approved with a 5-0 vote, the use of split-pad grading consistent with Measure A.
  - FAR – City Council approved the Planning Commission recommendation on a vote of 5-0 to increase the FAR in the Niles Community Commercial/Parking Assessment Area from 0.50 to 1.0, from 0.50 to 0.65 in the Mission San Jose Historic District consistent with the Mission San Jose Design Guidelines, and modified the findings necessary to approve increases in the allowable FAR in all community commercial districts.
  - Ocotillo Tentative Parcel Map 8244 (PLN2004-00042) Appeal: The first party (applicant) appeal of this parcel map denial has been formally withdrawn.



- Information from Commission: Commission members may report on matters of interest.
- It was decided that the Planning Commission dinner to be held in lieu of the next meeting would be held at 7:00 p.m., which was the time of the regularly scheduled meetings.

Meeting adjourned at 9:50 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

Jeff Schwob, Secretary  
Planning Commission